AN INQUIRY UNDER SECTION 248 OF THE CANADA LABOUR CODE (PART III - LABOUR STANDARDS) - THE COUNTRY ELEVATOR AGENTS AND MANAGERS HOURS OF WORK REGULATIONS, 1979, AS AMENDED

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RECOMMENDATIONS AND REPORT

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JANUARY 26, 1998

STEPHEN KELLEHER, Q.C.

I. BACKGROUND

On September 9, 1997, the Honourable Lawrence MacAulay, the Minister of Labour, appointed me to hold an inquiry into employment of persons defined as "employees" in Section 2 of the *Country Elevator Agents and Managers Hours of Work Regulations, 1979*, as amended. The appointment is pursuant to Section 248 of the *Canada Labour Code*:

> 248. (1) The Minister may,
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> (a) for any of the purposes of this Part, cause an inquiry to be made into and concerning employment in any industrial establishment; and
>
> (b) appoint one or more persons to hold the inquiry.
>
> (2) A person appointed pursuant to subsection (1) has all of the powers of a person appointed as a commissioner under Part I of the Inquiries Act.

My terms of reference are to make recommendations and report to the Minister on the following:

> 1. Whether the Commissioner recommends the repeal, amendment, replacement or the retention of the *Country Elevator Agents and Managers Hours of Work Regulations, 1979*, as amended. In making such recommendations, the Commissioner is to consider whether the application of Sections

169 and 171 of the *Canada Labour Code* to that class of employees without modification:

(i) would be or is unduly prejudicial to the interests of employees in that class; or

(ii) would be or is seriously detrimental to the operation of that industrial establishment.

2. Whether the Commissioner recommends that that class of employees be exempted from the application of Section 174 of the *Canada Labour Code*. In making such recommendations, the Commissioner is to consider whether Section 174 cannot reasonably be applied to that class of employees.

Part III of the *Canada Labour Code* provides, generally, that an employee's standard hours of work shall not exceed eight hours in a day or forty hours in a week. Section 174 requires that hours worked in excess of standard hours of work be paid at not less than one and one-half times the regular rate of wages.

These provisions came into effect in 1965. The then-Minister of Labour exempted country elevator agents from these provisions for a one-year period. Although that exemption was not renewed, these persons continued not to receive the benefit of these provisions. That is because the elevator companies asserted that these persons were managers and therefore not covered by the *Canada Labour Code*.

In 1973 the Grain Services Union applied to the Canada Labour Relations Board for certification in respect of certain employees of Manitoba Pool Elevators. The Board made a ruling in connection with this application that these elevator agents were indeed covered by the *Canada Labour Code*. Although the decision was made under the collective bargaining Part of the *Code* (Part V at the time and now Part I), and was only with respect to one employer, the Department of Labour began to treat these persons as employees for purposes of Part III, Standard Hours, Wages, Vacations and Holidays.

This led to the appointment of a Commissioner of Inquiry. On November 12, 1975, the then-Minister appointed J. Stewart Gunn, Esq. His terms of reference were similar to mine. He was to look at country elevator managers or country elevator agents and make findings and recommendations as to whether:

(a) the Hours of Work Provisions of Sections 29 and 30 of Part III of the *Canada Labour Code* without modification

  (i) would be unduly prejudicial to the interests of the employees;

  (ii) would be or is seriously detrimental to the operations of the Country Grain Elevator Companies;

(b) such employees should be exempted from the application of any one or more of Sections 29, 30 and 32.

(The provisions of the *Canada Labour Code* have since been renumbered).

The Gunn Commission conducted hearings and received written briefs. Mr. Gunn reached a number of conclusions. Among them were these:

- The diversity of duties, responsibilities and obligations of agents/managers make for an unusual and unstructured type of employment.

- The companies do not seriously challenge the Grain Services Union proposal for averaging hours of work, only the difficulties of monitoring daily and overtime hours reported by agents/managers.

- It is the opinion of the Commission that the many factors which cause wide fluctuations in the through-put of grain from farm to primary elevator to domestic and international positions do not facilitate the adoption of standard hours of work for agents/mangers.

- Concern must be expressed about the effects on earnings of agents/managers should there be a regulation of their hours of work without provision for maintenance of income.

- It would clearly be a disservice to all parties to cause disruption of the long-standing relationship between agents/managers and producers by reason of proposals, hastily conceived, that would reduce to too great an extent the availability of primary elevator services.

The Gunn Commission published these recommendations:

Recommendations

The application of the Hours of Work Provisions of Division 1 of Part III of the *Canada Labour Code* to the class of country elevator agents/manager without modification would be at this time:

(i) unduly prejudicial to the interest of those employees; and

(ii) seriously detrimental to the operation of the Country Grain Elevator Companies.

The Commission therefore RECOMMENDS that those companies having collective bargaining commitments continue to work to achieve an hours of work program and that all other companies, in consultation with their agents/managers, if necessary, work towards the same objective in order that the provisions of Sections 29 and 30 may be modified with respect to the country elevator agents/managers of all companies.

The Commission is of the opinion that it should not substitute its own views on appropriate hours of work without giving the parties ample opportunity to explore means of attaining new work rules in this unstructured type of employment and to do so in such a way that the demands of producers and government grain agencies will be served and without bringing damage to the grain trade of Western Canada.

The Commission also RECOMMENDS that the parties look to a solution so that by progressive steps the full provisions of the *Code* may be applied in the foreseeable future.

The Commission RECOMMENDS that country elevator agents/managers be exempted from the application of Sections 29 and 30 of the *Canada Labour Code* (Part III) for a period of at least 18 months.

Thus, Mr. Gunn recommended that the agents/managers be exempted for at least 18 months and that the parties work toward the application of the "full provisions of the *Code*" in the "foreseeable future".

The agents/managers were exempted from the application of the *Code* until August 1, 1978. This exemption was then extended to February 1, 1979.

In June, 1978, a collective bargaining dispute between the Grain Services Union and Saskatchewan Wheat Pool and Manitoba Pool Elevators was resolved. Part of the resolution was an understanding that the Conciliation Commissioner, Jack M. Chapman, Q.C., of Winnipeg, would review the hours of work issue and provide recommendations.

Mr. Chapman published his report on September 8, 1978. He noted that notwithstanding the Gunn Commission's recommendations, "...no substantive progress has been made by the parties in reaching any agreement whatsoever". He noted that while the grain elevator business had peculiarities of its own, the industry "...was not nearly as unique..." as the parties suggested. He pointed out that several other industries with unusual problems surrounding supervisors' hours of work had resolved these problems. He commended to the parties the accommodations reached with supervisory staff at Manitoba Hydro, with airline employees,

railway telegraphers, towboat employees and postmasters. He referred to these as a "sample" of industries that have been able to function within the hours of work provisions of the *Canada Labour Code*.

One of the points made by the employers in those proceedings was that it would be difficult to control hours of work. These agents/managers work in an unsupervised environment.

Mr. Chapman did not accept that submission:

> I am satisfied from the submissions made to me that an agent holds an extremely responsible position. He is in charge of a physical plant which may be worth approximately $1,000,000.00. He is in charge of buying and selling vast amounts of varied merchandise. I find it hard to accept that Agents could not be trusted to keep accurate and detailed records of their time. I also note that each group of elevators is under the jurisdiction and supervision of Regional Supervisors or Inspectors. Certainly, there is a reasonable way of checking the veracity and accuracy of the claimed hours.

Mr. Chapman recommended that the exemption not be extended past February 1, 1979. Instead, he recommended special regulations. These would provide for an eight-hour day and a five-day week with time and one-half for overtime in excess of that. The overtime would be paid in time off work and if the time off was not provided within six months, the agents/manager would receive

monetary compensation. He went on to recommend two "special farming seasons" of ten weeks each, a "planting season" from approximately April 15 to June 30 and a "harvest season" from August 14 to November 1. During those two seasons, the first eight hours in excess of forty would be compensated at straight time. Hours in excess of forty-eight, to a maximum of fifty-four hours, would be compensated at time and one-half.

He did not consider that these arrangements would be permanent. Rather, the plan would be a step toward the "ultimate objective" of having compliance with the *Code*.

On March 8, 1979, the Governor General in Council published regulations, *The Country Elevator Agents and Managers Hours of Work Regulations, 1979*. These Regulations provide:

> Whereas the Minister of Labour, pursuant to Section 62 of the *Canada Labour Code*, did on the 12th day of November, 1975, appoint a Commission to make an inquiry to ascertain the duties, functions and responsibilities of a class of employees known as "Country Elevator Managers" or "Country elevator Agents" employed in country grain elevators, the principal use of which is the receiving of grain from producers in the Province of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia for either, or both, storage and forwarding;
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> And whereas the Commission reported to the Minister of Labour on the 5th day of October, 1976.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, pursuant to Section 31 and paragraphs 32.1(1)(a) and (b) of the Canada Labour code, is pleased hereby to revoke the Country elevator Agents and Managers Hours of Work Regulations made by Order in Council P.C. 1977-1857 of 30th June, 1977[1], as amended[2], and to make the annexed regulations respecting Hours of work for certain Grain Elevator Employees in substitution therefor.

[1] SOR/77-568, *Canada Gazette* Part II, Vol. 111, No. 14, July 27, 1977
[2] SOR/79-129, *Canada Gazette* Part II, Vol. 113, No. 3, February 14, 1979

Regulations Respecting Hours of Work for Certain Grain Elevator Employees

Short Title

1. These Regulations may be cited as the *Country Elevator Agents and Managers Hours of Work Regulations, 1979*.

Interpretation

2. In these Regulations,

"Act" means Part III of the *Canada Labour Code; (Loi)*
"Director" means a regional director of the Department of Labour located at Moncton, Montreal, Ottawa, Toronto, Winnipeg or Vancouver; *(directeur)*
"employee" means a person who is a member of the class of employees known as Country Elevator Agents or Country Elevator Managers and is employed in the operation of an elevator as defined in subparagraph (a)(ii) of the definition "elevator" in Section 2 of the *Canada Grain Act*, including a person classed as an Assistant Country Elevator Agent or an Assistant Country Elevator Manager, where the person performs substantially the same duties as a Country Elevator Agent or Country Elevator Manager; *(employé)*

"Minister" means the Minister of Labour; *(ministre)*
"planting and harvest season" means a period of twenty consecutive weeks, or two periods that in the aggregate equal twenty weeks, between April 15 and October 31 in any year; *(les semailles et la moisson)*
"time off" means a period off work with pay to which an employee becomes entitled by working overtime during the planting and harvest season. *(congé compensatoire)* SOR/92-594, s.2.

Exemption

3. [Revoked, SOR/92-594 s. 2]

Modification

4. (1) The provisions of Sections 169 and 171 of the Act are modified to the extent set out in these Regulations for the purpose of the application of Division I of Part III of the Act to employees during the planting and harvest season.

(2) Where it is established to the satisfaction of the Minister that the planting and harvest season is inadequate due to extraordinary conditions affecting the grain industry, the Minister may authorize a further period to follow that planting and harvest season not exceeding five consecutive weeks, and the modification pursuant to subsection (1) shall apply to that further period so authorized. SOR/92-594, s.2.

Hours of Work

5. (1) The standard hours of work in relation to an employee during the planting and harvest season shall not exceed forty-eight hours in a week.

(2) In a week in which one or more general holidays occur that, under Division V of the Act, entitle an employee to holidays with pay in that week, the hours of work of the employee in that week shall be reduced by eight hours for each general holiday in that week, and, for the purposes of this subsection, in calculating the time worked by an

employee in any such week, no account shall be taken of any time worked by the employee on the holidays or of any time during which the employee was at the disposal of the employer during the holidays.

(3) Subject to Sections 176 and 177 of the Act, the total hours that may be worked by any employee in any week during the planting and harvest season shall not exceed 60 hours. SOR/02-594, s.2.

Time Off

6. Where an employee is required or permitted to work in excess of the standard hours of work referred to in subsection 5(1), he shall be granted time off at the rate of one and one-half hours for each one hour period that he worked in excess of those standard hours.

7. (1) Subject to subsection (2), where an employee is entitled to time off pursuant to Section 6, such time off shall be taken between the time it was earned and April 14 of the next following year.

(2) The requirement for an employee to take time off as prescribed in subsection (1) may be postponed in respect of all or any portion of the time off to which an employee is entitled by filing with the Director a written agreement between the employee and the employer stating that both parties agree to postpone the taking of such time off, and the filing of the agreement shall be deemed to authorize the postponement.

8. Where an employee with time off to his credit ceases to be employed, that employee shall be paid for each one hour period that he worked in excess of the standard hours of work referred to in subsection 5(1) for which he did not receive time off, at a rate of wages equal to one and one-half times the regular rate of wages paid to him immediately prior to his termination.

These regulations take their inspiration from Mr. Chapman's report but are substantially different from it. The Regulations provide for a "planting and harvest season" of "twenty consecutive weeks, or two periods that in the aggregate equal twenty weeks, between April 15 and October 31 in any year".

During this period, no overtime is payable until forty-eight hours have been worked in a week. Hours in excess of 48 are to be compensated by time off at the rate of one and one-half hours for each hour worked.

Thus, while Mr. Chapman recommended straight-time compensation for hours in excess of forty up to forty-eight, the Regulations do not provide this.

These Regulations have remained in force since that time. There is no evidence of progress by the parties to what Mr. Chapman referred to as the "ultimate objective" of compliance with the *Code*.

In September, 1996, the Grain Services Union made a submission to the Minister of Labour, arguing that the standard eight-hour day and forty-hour week should be available to its members in primary elevators. The Western Grain Elevator Association, an organization which represents nearly every grain elevator in Western Canada, made a submission in response, urging that no

change be made. Human Resources Development Canada looked into the matter and recommended to the Minister that a Commission be appointed to consider the issues.

That led to my appointment in September, 1997.

II. PROCESS

The process had two principal aspects. This was discussed on September 16, 1997 with spokespersons for the Western Grain Elevator Association and the Grain Services Union. Advertisements were placed in newspapers in major cities in Alberta, Saskatchewan and Manitoba and in the Western Producer newspaper. There were also announcements to producer organizations and producers through Agriculture Canada's communication network. The advertisement outlined the nature of the inquiry and invited members of the public to submit their views. It announced as well the time and place of public hearings.

Public hearings were conducted in Calgary, Winnipeg, Regina and Saskatoon on November 14, 17, 18 and 19, 1997, respectively. As well, I had an opportunity to tour three grain elevators in Saskatchewan. I was accompanied by representatives of the WGEA and the Union. These were a country grain elevator in Edenwold, a high throughput elevator in Davidson and a large elevator with some forty-six bargaining unit employees, the Agpro elevator in Saskatoon.

I wish to extend my thanks to the many individuals and organizations which contributed to the work of this Commission through presenting written and oral submissions. I appreciate the

very thorough material provided by the Western Grain Elevator Association and the Grain Services Union. The cordial cooperation of Ed Guest and Hugh Grant of those respective organizations was much appreciated. In addition, I want to thank Ms. Micheline Hérault of Human Resources Development Canada. Ms. Hérault acted as Secretary to the Commission: she received and transmitted the many submissions and made all the arrangements for public hearings.

I appreciate as well the technical assistance I received from Mr. Clair Hardy and Mr. Fred Chilton of Human Resources Development Canada.

Written submissions were received from the Grain Services Union and the Western Grain Elevator Association. In addition, submissions were filed by Wild Rose Agricultural Producers, Saskatchewan Canola Growers Association, Saskatchewan Chamber of Commerce, Western Canada Wheat Growers Association, National Farmers' Union, the Canadian Grain Commission, the Canadian Wheat Board, Alberta Soft Wheat Producers Commission, Alberta Grain Commission, Manitoba Corn Growers Association Inc., Flax Growers Western Canada and Keystone Agricultural Producers. I also received letters and oral submissions from individual producers and individual employees of grain elevators. Some sixty written submissions of this kind were received.

III. ELEVATOR MANAGERS AND ASSISTANT MANAGERS

The presentations to this Commission establish that these employees are an important cog in a very complex system of delivering grain to international and domestic markets.

The *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24, controls the marketing of wheat and designated barley. These "Board grains" may only be sold through the Canadian Wheat Board. Other "non-Board grains" are sold through the open market system. One of the elevator managers' duties is to serve as the Canadian Wheat Board's agent. The Board provides producers with permit books. When a producer delivers Board grains to country elevators the elevator manager records the grade and weight in the permit book.

The Board coordinates the movement of grain from elevators to export terminals and domestic users.

Standards of quality are established under the *Canada Grain Act*, R.S.C. 1985, c. G-10. It is the elevator manager who makes the first determination of grade, at the time the producer delivers to the country elevator.

The elevator manager also weighs each load delivered. The producer is then paid in accordance with the price which the Canadian Wheat Board has established. If the producer is delivering a non-Board grain, payment is made in accordance with the open market price.

The elevator manager's duties go well beyond this. The grain business is highly competitive. The manager must maintain a high level of service to the producer or run the risk that the producer will deliver grain elsewhere. Service includes being available to the producer when the producer wants to deliver.

Service also includes advising on and selling a wide variety of agro products, including herbicides, insecticides and fertilizers.

IV. POSITIONS OF THE PARTIES

The Grain Services Union argues that the Regulations should be repealed, not later than August 1, 1998. It characterizes the Regulations as providing 160 hours of unpaid overtime to grain companies. Its members work long hours without compensation. These hours affect the home and family life of employees in these classifications.

The Union points to the recommendation in the Gunn Report that the parties work toward a solution so that "the full provisions of the *Code* may be applied in the foreseeable future". A twenty-one year delay, the Union asserts, is well beyond the "foreseeable future".

The Grain Services Union points to substantial changes in grain elevators over the last twenty years. In the first place, there are far fewer elevators. Since the 1980-81 crop year, when the Regulations became effective, the number of primary elevators has declined from 3,324 to 1,199. The number of employees in primary licensed elevators has decreased by some twenty-two per cent.

There have also been major gains in productivity. Despite this substantial decrease in employment the volume of grain shipped through the system has not declined.

The gain in productivity has meant that the business of grain elevators is no longer concentrated in the planting and harvesting season. For example, it appears that July, which is not traditionally covered by the Regulations, is the busiest month for grain receipts. It is the third busiest month in terms of shipments.

The Grain Services Union argues that if the Regulations ever did make sense, there is no longer any justification for them.

The submissions received from individual elevator managers and assistant managers were to the same effect. They also made mention of the sacrifice to their personal lives as a result of working long hours in this industry.

The Western Grain Elevator Association's position is that the Regulations should be "enhanced", not repealed. It put forward several reasons why repeal would be inappropriate. The Association argues that the Regulations recognize the unique nature of the elevator manager's duties. Since the 1979 Regulations came in, the standard annual hours of managers has been 2,240 hours, not 2,080 hours. Salaries in non-union operations as well as those negoti-

ated with the Grain Services Union are based on the existing regulations.

The Association also points to the seasonal nature of its business. Elevators are busiest at seeding and harvest time. Producers operate with the reality that the number of frost free days is very close to the minimum number of days necessary for the production of grains. There is usually only one opportunity to seed or harvest. The elevator staff must provide service when that service is needed by the producer.

Third, the Association argued that repeal of the Regulations would lead to higher costs. Since virtually all managers work 2,240 hours, elevator companies would have to compensate them for the additional 160 hours at time and one-half. This would add approximately 12 per cent to their salaries. It would cost the industry some $10,000,000.00 per year. The Association speculated that this could lead to closing marginal operations. It would also lead to higher charges to producers. The producers are already facing significant increases in cost: farm equipment, fertilizers and herbicides have all increased dramatically in price. Grain prices have not kept up with these costs. The economics of operating with higher costs could also lead to seasonal layoffs of elevator employees.

The Association pointed to the collective bargaining leverage that would be accorded to the Grain Services Union if the Regulations were repealed. If the employer seeks concessions in collective bargaining to help pay for the high cost of repealing the Regulations, that will lead to possible strike action.

Finally, the Association argues, the Union must show there has been some significant change from 1979, when the Regulations were proclaimed, to justify their repeal. The Association argues that none of the changes that have occurred render invalid the assumptions upon which the Regulations were based.

The position of producer organizations and the vast majority of individual producers was that the Regulations should be retained. They emphasized the difficult environment in which producers operate and the lack of capacity for increased costs or decreased service. The Saskatchewan Canola Growers Association, for example, put it this way:

> The world market is highly competitive and any change that would increase producer costs or reduce the ability of canola producers to access world markets in a timely and efficient way will impair the ability of Western Canadian canola producers to compete in world markets.

Many producers pointed out that they as farmers work long days during certain times of the year. They do not think it unreasonable to ask the same of elevator agents.

Organizations other than producers largely took a similar view. The Saskatchewan Chamber of Commerce pointed out that the Grain Services Union was seeking a "legislated windfall" for its members: compensation in addition to what they were able to negotiate in collective agreements. The Alberta Grain Commission also expressed concern about costs and service:

> "...if companies are required to remunerate elevator managers and agents for overtime worked, such costs will be most certainly passed on to farmers in the form of increased elevation and handling costs. Considering that farm input costs have risen significantly in recent years, any additional cost to farmers will further erode farm margins.
>
> At the same time there could be broader costs to the industry. If companies are forced to look at their costs of service, and if overtime becomes excessive, they may decide to reduce hours of operation which could prove costly to the overall industry. If a farmer runs out of fertilizer on a Saturday, for example, and cannot get additional supply until Monday, two days of prime seeding time may have been lost".

The Canadian Wheat Board took a broader view. It argued that any loss of capacity because of operating circumstances would "immediately have an impact on the Canadian economy". It stressed the highly competitive international grain market.

V. CONCLUSIONS

I have considered the submissions which were made in writing and the points made in the public hearings.

I agree with many of the points made by the Western Grain Elevator Association and by producers and producer organizations. Western Canadian grain producers operate in a difficult environment. Producers depend on a high level of service from elevator companies both in elevating grain and in advising on and selling agro products.

But that does not mean that the Regulations should be retained. There is a fundamental unfairness for one group of employees to be treated differently from all other employees in the federal sector.

One can easily understand how the problem came about. The grain companies always considered that elevator managers and assistant managers were excluded from the operation of labour standards legislation.

Once the problem came to light, it needed to be addressed. Two independent persons, Mr. Gunn and Mr. Chapman, considered how this should be done. While these reports reach

somewhat different conclusions they have in common an underlying principle: that the employees and the employers and the Union will in due course reach an accommodation that will bring these employees under Part III of the *Code*. Thus Commissioner Gunn recommended an eighteen-month exemption from the application of the provision of the *Canada Labour Code*. This exemption was temporary: he also recommended that the parties work toward a solution. The goal was "...by progressive steps the full provisions of the *Code* may be applied in the foreseeable future."

Similarly, Mr. Chapman did not see the plan he outlined as a permanent solution. He referred to it in almost the same words, that it would "...be a progressive step in the fulfilment of the ultimate objective of having compliance with the *Code*."

Nineteen years have passed since Mr. Chapman's report. It is clear that the parties have not succeeded in taking any steps toward bringing the agents/managers within the *Code*.

The reasoning of both Mr. Gunn and Mr. Chapman is persuasive. Full compliance with the *Code* should be the objective. As Mr. Chapman pointed out, there are many employees in other federally regulated and provincially regulated occupations where special arrangements have been made. None of those arrangements, however, contemplates a work year of 2,240 hours without overtime.

It is clear that the objective can only be attained through Government action. It would be fruitless simply to recommend that the parties work toward this goal.

It follows that I recommend the repeal of the *Country Elevator Agents and Managers Hours of Work Regulations, 1979*, as amended. I do not consider that such a repeal would be in any way prejudicial to the interests of the employees affected. I do not consider that the repeal of these regulations would be seriously detrimental to the operation of the industrial establishment, provided that the timing of the repeal enables the parties to make the necessary adjustments to their collective agreements.

I am mindful of the concerns of those who object to the repeal of the Regulations. Producers have faced cost increases from every quarter without equivalent increases in grain prices. I recognize that they are entitled to continue to expect the highest quality of service. This is not simply a matter of convenience. It has been made clear to me that a delay in seeding of only a short time can have severe consequences.

I am also concerned by what Larry Seiferling, Q.C. of the Saskatchewan Chamber of Commerce referred to as a "legislated windfall". The companies and the Union have bargained collective agreements based on the existence of the Regulations. If those Regulations were simply repealed, the cost impact would not only be

substantial; it would be a cost not anticipated by the parties when they reached their bargain.

Is there a way in which the Regulations can be repealed without creating a serious detriment to the operation of the elevator companies? In my view there is. This can be accomplished by repealing the Regulations only after new collective agreements have been negotiated for all agents/managers represented by the Union.

The Grain Services Union argues that the employers should not seek to reduce costs in other areas of the collective agreements to make up for the increased cost of overtime. It argues that "...true pay equity precludes pay reductions when steps are taken to redress inequities in the workplace".

That is a perfectly decent position to take at the collective bargaining table. But I am not aware of any law which prevents an employer from seeking concessions at the bargaining table to offset increased costs from whatever source.

A concern was expressed that such a recommendation from the Commission of Inquiry would unfairly provide leverage to the Union. In my view my recommendation would be relatively neutral. I considered but decided against a recommendation that the Regulations be repealed on the expiry of the collective agreement

with the latest expiry date. That, I fear, could lead to instability if the collective agreement were to expire. I do not recommend repeal of the Regulations until the parties have actually reached collective agreements.

This Recommendation addresses the concern of producer organizations, individual producers and other Government bodies about increased cost and decreased services. It puts these important issues where they should be: in the hands of the employers and the Grain Services Union. It is up to them to bargain collective agreements which reflect these realities.

What about the non-union sector? It was suggested by some that seeking to adjust other levels of compensation could amount to a fundamental breach of employment contracts, exposing employers to damages for constructive dismissal.

I make no comment as to whether such adjustments could amount to constructive dismissal. But the recommendations I am making, that the Regulations be repealed, would not take effect for at least two years. This would provide non-union employers with the opportunity to give reasonable notice to its agents/managers of possible changes.

VI. RECOMMENDATION

I recommend the repeal of the *Country Elevator Agents and Managers Hours of Work Regulations, 1979*, as amended. The Regulations should be repealed as soon as, but not before, the Grain Services Union and grain elevator companies have entered into new collective agreements covering all agents/managers covered by the Regulations.

If the repeal of the Regulations is carried out in that manner, I am satisfied that the application of Sections 169 and 171 of the *Canada Labour Code* would not be prejudicial to the interests of the employees or seriously detrimental to the operation of grain elevators.

It follows that I recommend that these employees not be exempted from Section 174 of the *Canada Labour Code*. Again, if the repeal of the Regulations is carried out in the manner which I recommend, I conclude that Section 174 can reasonably be applied to these employees.

All of which is respectfully submitted this 26th day of January, 1998.

STEPHEN KELLEHER, Q.C.